Kelo precedent has connection to Trump's border wall

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In his speech Saturday, President Donald Trump reiterated his determination to build his border wall. Much of the debate over this issue focuses on whether Trump can get the funding he wants.

But even if congressional Democrats agree to give him the funds in exchange for concessions on other immigration issues, that would be only the beginning of the drama over the wall. Trump cannot acquire the land he needs without forcibly displacing large numbers of property owners by using eminent domain. That inevitably threatens the property rights of hundreds, perhaps thousands, of Americans.

Less than one-third of the needed land is currently owned by the federal government. The rest — as much as 1,300 miles — is held by private owners, Native American tribes and state governments, many of whom are unlikely to sell voluntarily. Even if the wall does not cover the full 2,000 miles because it excludes some areas, such as those that have "natural" barriers, many property owners will have to be displaced. There is no way to build an extensive continuous wall without that.

To get that land, the government would have to resort to eminent domain: a power that allows the state to seize property from unwilling owners. The result would be one of the largest federal condemnations in modern U.S. history.

In Texas there are some 4,900 parcels of privately owned land within 500 feet of the probable route of the wall. In Arizona, some 62 miles of the route is owned by the Tohono O'odham Nation, which opposes the wall because it would damage the tribe's land and impede ties with members across the border. No one knows exactly how many homes, businesses and tribal properties would have to be condemned. But it is likely that thousands of people would suffer.

Under Supreme Court precedent, owners of condemned property are entitled to "fair market value" compensation: roughly, the price the land would go for if sold on the open market. But studies show that owners often don't get the compensation that the law requires. That is particularly true of those who are poor or lack legal sophistication. Government officials often shortchange such people.

Such abuses were common in takings for previous, much smaller border barriers. A 2017 investigation conducted by ProPublica and the Texas Tribune analyzed more than 400 condemnations undertaken under the Secure Fence Act of 2006. They found that the Department of Homeland Security routinely "circumvented laws designed to help landowners receive fair compensation" and instead "issued low-ball offers based on substandard estimates of property values." As a result, "larger, wealthier property owners who could afford lawyers negotiated

deals that, on average, tripled the opening bids from Homeland Security." But "smaller and poorer landholders took whatever the government offered — or wrung out small increases."

Thus, retired teacher Juan Cavazos concluded he could not afford a lawyer and accepted $21,500 for a two-acre plot of land that was actually probably worth far more than that.

Even when owners do secure market-value compensation, that often fails to fully offset their losses. Many understandably value their property above its market value. Consider the case of the Texas butterfly sanctuary likely to be destroyed to build a portion of the wall. Market-value payments can hardly compensate for the loss to owners and researchers who have devoted so much to the sanctuary, which is the nation's most diverse. As National Butterfly Center outreach coordinator and Trump voter Luciano Guerra puts it, "by backing the wall, my party has abandoned the conservative principles I treasure: less government, less spending, and respect for the law and private property."

In 2005, the Supreme Court generated widespread outrage when it ruled in Kelo v. City of New London that the government could condemn homes to promote private "economic development." The project fell through, and today the site of Susette Kelo's house is used only by feral cats. Trump is a long-standing defender of Kelo, in large part because he himself has a history of benefiting from eminent domain abuse, including the notorious 1998 condemnation of elderly widow Vera Coking's home to build a parking lot for one of his casinos.

As legal scholar Gerald Dickinson notes, "The Great Wall of Trump could leave hundreds of Cokings and Kelos at risk of losing their property" — vastly more than in Kelo. They would lose their land to build a structure that is not justified by any genuine security crisis, is likely to cost more than $20 billion in taxpayer money and probably would not significantly reduce undocumented immigration. Even seizing land for feral cats seems a better deal than that.

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